

STATE LAND DEPARTMENT  
STATE OF ARIZONA

COMMERCIAL LEASE

THIS INDENTURE, made and entered into this 29th day of June, 19 88

by and between the State of Arizona, hereinafter called the lessor, and CYPRUS BAGDAD COPPER  
CORPORATION, a Delaware corporation

of Bagdad, State of Arizona, hereinafter called the lessee:

WITNESSETH, that the State Land Commissioner, by virtue of the authority vested in him by law, and in consideration of the application heretofore made, and the covenants and agreements of this lease, hereinafter set forth, has this day leased to the said lessee the State Land, as hereinafter described, subject to any and all indebtedness that may be known to be due or that may be proven to be due hereafter.

TO HAVE AND TO HOLD the same for the period ending the 28th day of June, 19 98, and subject to the conditions and reservations elsewhere set forth herein. The lessee agrees to pay as rental therefor an amount to be determined by the State Land Commissioner each year by an appraisal made by him, or his duly authorized agent, as provided by law. The rental so fixed by the State Land Commissioner will be due and payable annually in advance.

That it is further understood and agreed that this lease is issued for the purpose of: Well site which will serve water to the town of Bagdad for domestic and mining purposes.

IT IS HEREBY COVENANTED AND AGREED by both parties hereto that this lease is issued subject to all the provisions and requirements thereto, which are found in the various Acts of the Legislature of the State of Arizona, the same as though they were fully set forth herein.

IT IS HEREBY FURTHER COVENANTED AND AGREED that all of the covenants, conditions and agreements, included in this lease, shall be, become and are a part of the lease, the same as though set forth in full over the signatures of the contracting parties hereto.

NOTICE TO ANYONE DEALING WITH THIS DOCUMENT

This document merely authorizes pursuit of its stated purposes;  
its existence does not constitute a finding by the Land Department  
that those purposes may be pursued profitably.

## SUPPLEMENTAL CONDITIONS

(A) The lessee will not sub-let or assign the land herein described or this lease without the written consent of the State Land Commissioner, first obtained, and will, upon the expiration of the lease, surrender peaceable possession of the said land.

(B) The lessee will not permit any loss, nor commit or cause any waste in, to or upon said land; nor cut or remove nor allow to be cut or removed any timber or standing trees that may be upon said land, save and except only such as may be necessary for the improvement of said land, (and then only with the written consent of the State Land Commissioner) or for fuel for the domestic use of said lessee; provided that nothing herein shall be construed to permit the cutting of saw timber for any purpose.

(C) That the lessor excepts and reserves out of the grant hereby made, all oils, gases, coal, ores, limestone, minerals, fossils, and fertilizers of every name and description that may be found in or upon the land herein described, or any part thereof.

(D) The lands herein described are subject to the execution by lessor of drilling permits and leases for the purpose of prospecting for, and the extraction of, oil and/or gases.

(E) That the lessor also reserves the right, as provided by law, to grant to the United States rights-of-way and easements over, across or upon the lands embraced in this lease for canals, reservoirs, dams, power or irrigating plants or works, railroads, tramways, transmission lines or other purposes, for irrigation works in connection with any government reclamation project.

(F) That if at any time after the execution of this lease, it is shown to the satisfaction of the State Land Commissioner, that there has been fraud or collusion upon the part of the lessee to obtain or hold this lease at a less rental than its value, or through such fraud and collusion a former lessee of said land has been allowed to escape payment of the rental due for the use of said land by the former lessee, this lease shall be null and void, at the option of the State Land Commissioner, insofar as it relates to the land affected by said fraud or collusion.

(G) That if at any time after the execution of this lease it is shown to the satisfaction of the State Land Commissioner that the lessee herein has misrepresented, by implication or otherwise, the value of the improvements placed upon the land herein embraced by a former lessee, or any other person or persons and the lessee herein not being the owner of said improvements at the time of the execution of this lease, this lease shall be null and void, at the option of the State Land Commissioner, insofar as it relates to the land upon which said improvements are situated.

(H) If the lessee should fail to pay the agreed rental when due, or fail to keep the covenants and agreements herein set forth, the State Land Commissioner, at his option, may cancel said lease or declare the same forfeited in the manner provided by law.

(I) That the State of Arizona shall be forever wholly absolved from any liability for damages which might result to the lessee herein on account of this lease having been forfeited for nonpayment of rentals due thereunder prior to the expiration of the full time for which it is issued.

(J) It is understood by the lessee that the establishment of any water right, or rights, shall be by and for the State of Arizona, and that no claim thereto shall be made by said lessee; such rights shall attach to and become appurtenant to the said land.

(K) If the lessee desires to place improvement on the land described herein the approval of the State Land Commissioner must first be obtained. That the lessee will, on or before the first day of July of each year during the term herein specified, file with lessor a sworn statement setting forth therein the character of improvements constructed on said demised premises and the actual cash value thereof.

(L) That said lessee shall have the right to remove from said demised premises, at the end of the term herein specified or upon the earlier termination thereof, all buildings, structures or improvements of whatever nature placed by it on said premises. Such right to be exercised within thirty (30) days from the date of the end of such term or earlier termination thereof.

(M) That said lessee shall give lessor thirty (30) days' notice in writing in advance of the abandonment of said premises or termination of these presents.

(Continued)

SUPPLEMENTAL CONDITIONS  
(cont.)

(N) The terms, conditions and covenants of this lease are subject to present laws relating to state lands and the rights of both lessor and lessee hereunder are each and all subject to such modifications as may be consistent with such amendments, revisions or repeals of existing laws as may hereafter be made and no provisions of this lease shall create any vested right in the lessee herein.

(O) Any improvements placed on this commercial lease must conform to existing Laws and Ordinances relative to commercial construction and maintenance in the area where this land is located. Approval granted by regulatory authorities will accompany application to place improvements when filed with the State Land Department.

(P) That the lessor also reserves the right to grant rights-of-way and easements over, across, or upon the lands embraced in this lease for public highways, railroads, tramways, telephone, telegraph, transmission lines, pipe lines, irrigation works, flood control, drainage works, logging and other purposes, and this lease is issued subject to all existing rights-of-ways.

(Q) Lessee shall notify the Lessor in writing of the number of any license issued by the State Tax Commission of Arizona to Lessee, any Sub-Lessee, Concessionaire or Assignee, and the name in which issued; Lessee, any Sub-Lessee, Concessionaire or Assignee does hereby consent to the examination of any such returns filed with the State Tax Commission by Lessee, any Sub-Lessee, Concessionaire or Assignee.

(R) Lessee and each Sub-Tenant, Concessionaire or Assignee shall at all times keep and maintain an accounting system and books of accounts and records satisfactory to Lessor: Lessee shall, at all times during business hours, have access to such records at the place where the same are kept, for the purpose of inspecting and auditing the same.

(S) Within 60 days after request is made by Lessor, Lessee shall file with Lessor a statement of the total gross sales made for the period therein specified; unless otherwise directed by Lessor, this report may be made by filing with the Lessor the requested information on the form used by the State Tax Commission of Arizona (Form ST-1, (1-68) at present) "Combined Transaction-Privilege (sales) Tax, Education Excise Tax, and Special Excise Tax for Education Return."

(T) Improvements made on or to the site, without the written consent of the Lessor as required by Arizona Revised Statutes, Section 37-321, shall constitute a breach of this lease and subject this lease to cancellation by Lessor.

(U) All buildings and structures shall be of new construction, and no buildings or structures shall be moved from any other location onto the leased premises without the prior written approval of Lessor.

(V) Gas, electric, power, telephone, water, sewer, cable television and other utility or service lines of every nature whatsoever shall be placed and kept underground (except to the extent, if any, such underground placement may be prohibited by law) unless Lessor otherwise approves in writing.

(W) Prior to the approval of any application to place improvements on the leased premises, the Lessee shall file with Lessor plans and specifications (including but not limited to grading and landscape plans) showing the nature, location, approximate costs, quality of proposed materials, size, area, height, color, shape and design of the proposed improvements; the Lessor may also require a perimeter survey of the leased premises, upon which shall be shown the location of the completed improvements.

If the removal of plants protected under the Arizona Native plant law is necessary to enjoy the privilege of this document, the permittee hereunder must previously acquire the written permission of the Arizona State Land Department and Arizona Commission of Agriculture and Horticulture to remove those plants.

The lease may be amended from time to time by mutual agreement of the parties hereto, provided that the lessor deems such amendment to be in the best interests of the State of Arizona.

The lessee acknowledges that lessee has not been induced to enter into this lease agreement by any promises from the State Land Department or any of its personnel that the premises being leased herein will be offered for sale at any time.

(Continued)

Lessee agrees and understands that all uses of the land not expressly authorized or permitted by this lease are expressly prohibited.

In any action arising out of this lease, the prevailing party is entitled to recover reasonable attorneys' fees in addition to the amount of any judgment, costs and other expenses as determined by the court. In the case of the lessor, reasonable attorneys' fees shall be calculated at the reasonable market value for such services when rendered by private counsel notwithstanding that it is represented by the Arizona Attorney General's Office or other salaried counsel.

The Lessee agrees to indemnify, hold and save Lessor harmless against all loss, damage, liability, expense, costs and charges incident to or resulting in any way from any injuries to person or damage to property caused by or resulting from the use, condition or occupation of the land.

### CONDEMNATION

If at any time during the duration of this lease the whole or any part of the leased premises shall be taken by direct sale, lease, institutional taking or acquisition in any manner through condemnation proceedings or otherwise, for any quasi-public or public purpose by any person, private or public corporation, or any governmental agency having authority to exercise the power of eminent domain or condemnation proceedings pursuant to any law, general, special or otherwise, this lease shall expire on the date when the leased property shall be so taken or acquired except that in the event of a partial taking the lease may continue in full force and effect for those lands not taken, however, the lessee shall have no compensable right or interest in the real property being condemned and shall have no compensable right or interest in severance damages which may accrue to the remaining lease property not acquired by condemnation proceedings. Rent paid or to be paid by lessee shall be apportioned as of the date of such taking and rent for any remaining land under the lease after the taking shall be reduced proportionately to the acreage remaining under the lease to the lessee. The State Land Department shall be entitled to and shall receive any and all awards, including severance damage to remaining State lands, that may be made for any eminent domain or condemnation proceedings concerning the land which is the subject of this lease, except that lessee shall have the right to receive any and all awards or payments made for any buildings or other improvements lawfully placed on the subject property by the lessee with the approval of the State Land Department.

Notice of State Authority to Cancel this Contract:

A. The State may cancel any contract, without penalty or further obligation, made after September 4, 1978, by the State or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State or any of its departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

B. The cancellation shall be effective when written notice from the Governor is received by all other parties to the contract unless the notice specifies a later time.

This document is submitted for examination. This is not an option or offer to lease or grant a permit. This document shall have no binding effect on the parties unless and until executed by the Lessor (after execution by the lessee or permittee), and fully executed copy is delivered to the lessee or permittee.

The State of Arizona saves and reserves the right to relinquish to the Federal Government, at any time, the State's right or claim to any part of the land described herein, and thereupon this (lease) (permit) will be null and void insofar as it relates to the land the State relinquished.

DESCRIPTION OF LAND LEASED CONTAINED IN LEASE SUPPLEMENT ATTACHED HERETO AND  
MADE A PART HEREOF.

STATE OF ARIZONA  
LAND DEPARTMENT

08	23	88
MO	DAY	YR

BAGDAD COPPER CORP  
P O BOX 245  
BAGDAD AZ 86321

03	00878	00
RE	LEASE NUMBER	

[illegible]

Signed in the County of Yavapai, State of Arizona, on the 20 day of September, 1988

(Sign Here)

Lessee

(Sign Here)

**Lessee**

This lease is  
issued in duplicate

OTHER TERMS

03-878

1. "CPI" shall mean the Consumer Price Index, U.S. City Average for all Urban Consumers--All Items (1982-84 equals 100) for the pertinent month, issued by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI shall hereafter be converted to a different standard reference base or otherwise revised, adjustments of rent based upon the CPI shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics, or if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by any nationally recognized publisher of similar statistical information. If the CPI shall cease to be published, there shall be substituted therefore such index as Lessor selects as a reasonable substitute.
2. Lessee shall pay rent to lessor for the use and occupancy of the premises during the term of this lease without offset or deduction except as provided hereafter and, without notice or demand, at the times and in the amounts as follows:  
  
The annual rent shall be due every year on the anniversary of the commencement date as follows: Rent for the first lease year shall be \$632.00. Rent for the second through tenth lease years will be \$632.00 and as adjusted in "Other Terms" 3 and 4.
3. The annual rental shall be adjusted for lease years two through five and seven through ten by the Consumer Price Index but shall never be less than the amount for the previous lease year.
4. Lessor shall adjust the land value by reappraisal at the end of the fifth lease year for rental rate charges in order to reflect changes in general economic conditions.
5. Lessee shall pay a penalty of five (5%) percent of any amount delinquent, and shall pay daily interest on delinquent amount plus penalty for the rate set by the Arizona State Treasurer, according to law.
6. Lessee shall make application to place improvements on the leased premises and have Department approval of such application prior to any construction activities.
7. Any improvements placed upon the leased premises without prior written permission of the Land Department, shall be forfeited and become property of the State.
8. Lessee shall adhere to all rules, regulations, ordinances, and building codes as promulgated by local jurisdictions and any applicable State agencies.

9. Special Water Conditions:

- a. A minimum charge for groundwater used in the conduct of lessee's business will be assessed each year. This charge will be subject to annual reappraisal.
- b. Lessee agrees to pay the Department for all water withdrawn over the minimum amount.
- c. Annual reports of water must be submitted to the Department on standard forms supplied by the Department.
- d. Lessee is required to measure withdrawals if groundwater is pumped from a non-exempt well. However, if well has been granted a Type 2 Grandfathered Right or a groundwater withdrawal permit for ten acre feet or less, there is no requirement to measure withdrawals.
- e. The Arizona Department of Water Resources requires an annual report of groundwater pumped from non-exempt wells within Active Management Areas and Irrigation Non-Expansion Areas. The annual report and any withdrawal fee should be submitted to the Land Department in a timely manner, as set by the Department.
- f. If groundwater is pumped off State land or is used for purpose(s) different from the lease, then lessee must immediately notify the Department to hold a public auction sale of the water.
- g. Department personnel will have access to well(s) during reasonable hours.

10. INSURANCE AND INDEMNITY

- a. Irrespective of any insurance carried by lessor for the benefit of lessor, lessee hereby expressly agrees to indemnify and hold lessor harmless, or cause lessor to be indemnified and held harmless, from and against all liabilities, obligations, damages, penalties, claims causes of action, costs, charges and expenses, including attorney's fees and costs, which may be imposed upon or incurred by or asserted against lessor by reason of the following: (a) any accident, injury or damage to any person or property occurring on or about the premises or any portion thereof; (b) any use, nonuse or condition of the premises or any portion thereof; or (c) any failure on the part of lessee to perform or comply with any of the provisions of this lease; except such as may be the result of lessor's request and at lessee's expense, will resist and defend such action or proceeding, or cause the same to be resisted and defended either by counsel designated by lessee or, where such occurrence is covered by liability insurance, by counsel designated by the insurer.
- b. Lessee at its expense, shall at all times during the term, and any extension maintain in full force a policy or policies

of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of Arizona, which insure lessee and lessor against liability for injury to persons and property and death of any person or persons occurring in, on or about the premises, or arising out of lessee's maintenance, use and occupancy thereof. All public liability and personal property damage policies shall contain a provision that lessor, names as an additional insured, shall be entitled to recovery under the policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence or wrongdoing of lessee, its servants, agents and employees or sublessees. Further, the policies shall provide that their coverage is primary over any other insurance coverage available to the lessor, its servants, agents and employees. All policies of insurance delivered to lessor must contain a provision that the company writing the policy shall give to lessor thirty (30) days notice in writing in advance of any cancellation or lapse, or the effective date of any reduction in the amounts of insurance.

- c. The insurance as described in Article 10a. shall afford protection to the limit of not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to injury to or death of one person; One Million Dollars (\$1,000,000.00) in respect to of any one occurrence; and One Hundred Thousand Dollars (\$100,000.00) with respect to property damage; provided, however, that the minimum amount of coverage for the above shall be adjusted upward on lessor's reasonable request so that such respective minimum amounts of coverage shall not be less than the amounts then required by statute or generally carried on similarly improved real estate in Yavapai County, Arizona, whichever is greater. If at any time lessee fails, neglects or refuses to cause such insurance to be provided and maintained, then lessor may, at its election, procure or renew such insurance any amounts paid therefor by lessor shall be an additional amount due at the next rent day.
- d. Notwithstanding anything to the contrary in this Article, lessee's obligations to carry the insurance provided for herein may be bought within the coverage of a so-called blanket policy or policies of insurance maintained by lessee, provided, however, that the coverage afforded lessor will not be reduced by reason of the use of such blanket policy of insurance.
- e. Copies of certificates of insurance shall be delivered to lessor prior to lessee's occupancy of the premises. Lessee shall also submit proof of payment of premium.

#### 11. Environmental Indemnity

Lessee hereby agrees to and does indemnify and holds the Lessor harmless from and against any and all liability, obligations,



losses, damages, penalties, claims, environmental response and cleanup costs, fines, and actions, suits, costs, taxes, charges, expenses and disbursements, including legal fees and expenses of whatsoever kind or nature (collectively, "claims" or "damages") imposed on, incurred by, reserved against the lessor in any way relating to or arising out of (A) any misrepresentation by lessee under this Lease or (B) the management, mismanagement, presence, use, possession, generation, transportation, removal, treatment, storage, disposal, mitigation or remedy of any "regulated substance," as defined herein in, on, under or from the Parcel on or after the date hereof, and any regulated substances present on the property on or after the date hereof and removed from the property.

For the purposes of this lease, the term "regulated substances" shall include substances defined as "regulated substances," "hazardous waste," "hazardous substances," "hazardous materials," "toxic substances" or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the relevant local and state environmental laws, and the regulations, rules and ordinances adopted and publications promulgated pursuant to the local, state and federal laws. This indemnification shall include, without limitation, claims or damages arising out of any violations of applicable environmental laws, regulations, ordinances or subdivisions thereof, regardless of any real or alleged fault, negligence, wilful misconduct, gross negligence, breach of warranty, or strict liability on the part of any of the indemnities. The foregoing environmental indemnity shall survive the expiration or termination of this lease and/or any transfer of all or any portion of the Parcel and shall be governed by the laws of the State Of Arizona.

In the event any such action or claim is brought or asserted against the Lessor, the Lessee shall have the right, subject to the right of the Lessor to make all final decisions, (i) to participate with Lessor in the conduct of any further required cleanup, removal or remedial actions and/or negotiation and defense of any claim indemnifiable under this environmental indemnity provision, having reasonable regard to the continuing conduct of the operation/business located on the Parcel and (ii) to participate with the Lessor in negotiating and finalizing any agreement or settlement with respect to any such claim or cleanup.